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6 Attorney for Plaintiff

7 WESTLAKE SERVICES, LLC D/B/A

8 WESTLAKE FINANCIAL SERVICES;

9 NOWCOM CORPORATION;

10 UNITED STATES DISTRICT COURT

11 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

13 WESTLAKE SERVICES, LLC  
14 D/B/A WESTLAKE FINANCIAL  
15 SERVICES; and NOWCOM  
16 CORPORATION;

17 Plaintiff,

18 v.

19 CREDIT ACCEPTANCE  
20 CORPORATION; and DOES 1  
21 through 10, inclusive,

22 Defendant.

Case No.

**COMPLAINT FOR:**

- 1) **Violation of Section 2 of the Sherman Act (15 U.S.C. § 2);**
- 2) **Sham Litigation: Monopolization and Attempted Monopolization (15 U.S.C. § 2);**
- 3) ***Walker Process*; and**
- 4) **Unfair Competition Under Cal. Bus. And Prof. Code § 17200**

**DEMAND FOR JURY TRIAL**

1 Westlake Services, LLC d/b/a Westlake Financial Services (“Westlake”), and  
2 Nowcom Corporation (“Nowcom”), by and through their counsel, brings this Complaint  
3 against Credit Acceptance Corporation (“CAC”), for violation of Section 2 of the  
4 Sherman Act, sham litigation (monopolization and attempted monopolization), *Walker*  
5 *Process*, and Unfair Competition under California Business and Professions Code  
6 § 17200 arising out of CAC’s anticompetitive conduct in connection with U.S. Patent No.  
7 6,950,807 (“the ’807 Patent”). Westlake seeks actual and enhanced damages.

8  
9 **PARTIES**

10 1. Westlake Services, LLC d/b/a Westlake Financial Services, is a limited  
11 liability company organized under the laws of the State of California. Westlake  
12 specializes in the acquisition and servicing of sub-prime automotive retail loans.  
13 Westlake Financial Services is an internet-based, privately held finance company that  
14 provides sub-prime lending and auto financing for independent and franchise dealers.

15 2. Nowcom Corporation is a corporation organized under the laws of the State of  
16 California. Nowcom Corporation provides technology such as Dealer Desktop software  
17 for independent and franchise car dealerships that runs credit reports, manages auto  
18 inventory, prints contracts and forms, and adds insurance binders.

19 3. Upon information and belief, CAC is a corporation organized under the laws  
20 of the state of Michigan.

21 4. Upon information and belief, CAC represents that it is the owner by  
22 assignment of the ’807 Patent.

23  
24 **JURISDICTION AND VENUE**

25 5. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §§ 2 and 15  
26 (federal antitrust), 35 U.S.C. § 1 *et seq.* (patents), and 28 U.S.C. §§ 1331 (federal  
27 question) and 1338(a) (patents).



1 (“CBM-1”). On March 31, 2014, the Board instituted review of claims 1-9, 13, 33-42 and  
2 declined to institute review of claims 10-12, 14-33. On March 24, 2015, the Board issued  
3 its Final Written Decision in CBM-1 ordering that under 35 U.S.C. § 101, claims 1-9, 13,  
4 34-42 of the ’807 Patent are invalid because they cover unpatentable subject matter. CAC  
5 did not seek rehearing of the Final Written Decision and did not appeal the final decision  
6 to the Federal Circuit.

7 14. Westlake filed a second CBM petition on August 15, 2014, CBM2014-00176  
8 (“CBM-2”), with the Patent Trials and Appeal Board covering the remaining claims of  
9 CAC’s ’807 Patent. CAC filed its Preliminary Response in CBM-2 on November 20,  
10 2014. In its Preliminary Response, CAC raised an estoppel argument and sought to  
11 terminate the proceedings.

12 15. The Board concluded that CAC’s argument regarding 35 U.S.C. § 325(e) was  
13 not yet ripe, but expressly rejected CAC’s arguments for discretionary termination under  
14 § 325(d).

15 16. The Board instituted review of claims 10-12 and 14-33 on § 101 grounds  
16 stating that “[i]n light of [the] recent guidance from the Supreme Court and the Federal  
17 Circuit, we are persuaded that Petitioner’s evidence, if not rebutted, would demonstrate  
18 that it is more likely than not that claims 10-12 and 14-33 are directed to non-statutory  
19 subject matter.” CAC did not request rehearing on the institution decision.

20 17. On May 14, 2015, the Board denied CAC’s request to terminate the CBM  
21 proceedings. In its Order, the Board stated that estoppel does not apply to claims 10-12,  
22 14-33 and that institution of CBM-2 was proper.

23 18. Westlake filed its Reply in CBM-2 on July 7, 2015 and the hearing before the  
24 PTAB took place on CBM-2 on September 10, 2015. The Final Written Decision from  
25 the Board is due, by statute, no later than February 6, 2016.

26 19. Westlake’s prosecution of both CBM-1 and CBM-2, and Westlake’s defense  
27 (with Nowcom) of CAC’s claims in the Westlake action revealed that CAC failed to  
28

1 disclose to the USPTO during prosecution sales and offers for sale CAC made on its  
2 patented invention, the Credit Approval Processing System (“CAPS®”). These sales and  
3 offers for sale were made more than one year prior to the filing of the application for the  
4 ‘807 Patent in violation of 35 U.S.C. § 102. Publically available evidence reveals that  
5 CAPS was offered for sale as early as August 2000. **Exhibit B.** The filing date of the  
6 application for the ‘807 Patent is December 31, 2001.

7 20. Although Mr. Brock (the named inventor of the ‘807 Patent) held various  
8 positions at CAC, including project management in the Information Technology  
9 department and VP of Sales and VP of Loan Servicing, and CAC employed Mr. Brock at  
10 the time of filing of the application which led to issuance of the ‘807 Patent, neither Mr.  
11 Brock nor anyone else at CAC disclosed these sales of CAPS to the USPTO during the  
12 prosecution of the patent application. Because these CAPS® sales would have been  
13 material to the patentability of the claims of the ‘807 Patent, Mr. Brock, CAC and their  
14 counsel were all under an affirmative obligation to disclose these materials to the USPTO  
15 during prosecution of the ‘807 Patent. Nevertheless, Mr. Brock, CAC and their counsel  
16 violate their duty of candor to the USPTO by withholding evidence of the CAPS® sales  
17 to the USPTO.

18 21. Early sales of CAPS® are material to at least claims 1, 14, 25, 34, and 41 of  
19 the ‘807 Patent. Furthermore, CAC has admitted that CAPS® is the embodiment of the  
20 ‘807 Patent:

21 Recognizing the market-changing potential and economic value of  
22 CAPS, CAC obtained a patent to protect the core components of the  
23 CAPS method and systems. On September 27, 2005, the U.S. Patent  
24 and Trademark Office duly and legally issued United States Patent No.  
25 6,950,807 (“‘807 patent”), entitled “System and Method for Providing  
26 Financing.”

27 *See Westlake action, Docket No. 1, ¶ 16.*  
28

1           22. Westlake is informed and believes that but for Mr. Brock's, CAC's and their  
2 counsel's non-disclosure of the CAPS® sales information to the USPTO, claims of the  
3 '807 Patent would not have issued.

4           23. Westlake also learned during the prosecution of CBM-1 and CBM-2, and with  
5 Nowcom in the defense of the Westlake action that CAC intentionally failed to disclose  
6 material prior art, including third party public use of a competing software product by  
7 ZoomLot. **Exhibit C.** CAC's Competitor National Auto Credit acquired ZoomLot in  
8 2000. **Exhibit D.**

9           24. Prior to issuance of the '807 Patent, CAC filed a copyright infringement suit  
10 against National Auto Credit Inc. asserting that CAC had valid copyrights over its  
11 financing program materials. In 1995 CAC and National Auto Credit Inc. ("NAC")  
12 resolved the case with NAC acknowledging that CAC has valid copyrights over its  
13 financing program materials. **Exhibit E.** NAC published details regarding ZoomLot via  
14 the Internet as early as 2000. **Exhibit C.**

15           25. Mr. Brock, CAC, and their counsel failed to disclose Zoomlot to the USPTO  
16 during the prosecution of the '807 Patent. Zoomlot would be considered material prior art  
17 to the '807 Patent, because there is a substantial likelihood that a reasonable examiner  
18 would consider Zoomlot important in deciding whether to allow the application to issue  
19 as a patent. Mr. Brock, CAC and their counsel were all under an affirmative obligation to  
20 disclose these materials to the USPTO during prosecution of the '807 Patent.  
21 Nevertheless, Mr. Brock, CAC and their counsel violated their duty of candor to the  
22 USPTO by withholding evidence of Zoomlot to the USPTO.

23           26. Zoomlot is material to at least claims 14, 17, 18, and 19 of the '807 Patent.

24           27. Westlake is informed and believes that but for Mr. Brock's, CAC's and their  
25 counsel's non-disclosure of the Zoomlot to the USPTO, claims of the '807 Patent would  
26 not have issued.

28. Westlake also learned during the prosecution of CBM-1 and CBM-2 and with Nowcom during their defense of CAC's claims in the Westlake action that CAC has been advertizing that CAPS is "patented." **Exhibit F.** The '807 Patent is the only patent currently assigned to CAC. **Exhibit G.** Because the '807 Patent was fraudulently obtained, CAC has also been falsely marking its CAPS product.

29. Despite the discovery of facts demonstrating inequitable conduct before the USPTO and CAC's motion to dismiss the Westlake action, CAC continued its attempt to enforce the fraudulently procured '807 Patent. Specifically, CAC continued to threaten Westlake, Nowcom, their competitors and customers from offering to sell, selling or purchasing competitive software products and competing in the market for those products. Moreover, CAC refused to seek an adverse judgment from the PTAB notwithstanding the motion to dismiss filed in the Westlake action.

30. By its anticompetitive conduct, CAC attempted to, and did, monopolize a rapidly expanding market for e-commerce software that facilitates subprime auto loans.

31. As a consequence of CAC's anticompetitive conduct, Westlake and Nowcom have sustained loss of profits and other damages, and consumers in the Relevant Market were injured as further described herein.

### **Relevant Market**

32. CAC's activities in this case relate to one or more relevant markets. These markets include the following product markets, in the conjunctive or in the alternative: (a) a product market for e-commerce software that facilitates subprime auto loans; (b) a product market for e-commerce software that facilitates auto loans.

33. The relevant geographic market for each of the product markets described above is the United States ("the Relevant Geographic Market").

34. CAC's anticompetitive conduct has adversely impacted competition and consumers in the Relevant Market.

### **Market Power**



1 35. At all times, CAC has marketed and sold in commerce in the United States  
2 software products including CAPS®.

3 36. Westlake and Nowcom allege upon information and belief that CAC  
4 maintains the predominant market share of and market power in the Relevant Market.

5 37. By its conduct of enforcing (and continuing to enforce) the fraudulently  
6 procured the '807 Patent, CAC attempted to, and did, monopolize the Relevant Market.

7 **CAC's Fraudulent Procurement of the '807 Patent**

8 38. On December 31, 2001, the application that resulted in the '807 Patent was  
9 filed as U.S. Application No. 10/037,055, naming Jeffrey Brock as the inventor. The  
10 Patent issued on September 27, 2005.

11 39. Mr. Brock signed the inventor declaration of the '807 Patent, indicating he  
12 was aware of his duty to disclose prior sales of the claimed invention. See **Exhibit H**,  
13 attached hereto.

14 40. Westlake and Nowcom are informed and believe and on that basis allege that  
15 Mr. Brock has been employed by CAC since 1995 and currently holds the position Vice  
16 President of Sales Operations. See **Exhibit I**, attached hereto.

17 41. Westlake and Nowcom are informed and believe and on that basis allege prior  
18 to filing the patent application which led to the '807 Patent, CAC made available to the  
19 public, offered for sale, or advertized its software products, CAPS. See **Exhibit J**,  
20 attached hereto.

21 42. These offers for sale, sales, publication, or public use of CAPS on or before  
22 December 30, 2000 are a bar to patentability under § 102.

23 43. During the application process for the '807 Patent, CAC, Mr. Brock and their  
24 counsel intentionally failed to disclose to the Patent Office material prior CAPS® sales of  
25 which they were aware. In doing so, they violated their statutory duties of candor and  
26 good faith to the Patent Office.

27 **Prior Art Intentionally Withheld From The Patent Office**  
28



1           44. CAC filed a copyright infringement suit against competitor National Auto  
2 Credit Inc. asserting that CAC has valid copyrights over its financing program materials.  
3 In 1995 CAC and National Auto Credit Inc. (“NAC”) resolved the case with NAC  
4 acknowledging that CAC has valid copyrights over its financing program materials. See  
5 **Exhibit E**, attached hereto.

6           45. Around and before the date that CAC filed the application for the ’807 Patent,  
7 NAC owned a finance software identified as Zoomlot. NAC published details regarding  
8 Zoomlot via the Internet at least from 2000 until the filing of the ’807 Patent application.  
9 See **Exhibit C**, attached hereto.

10           46. Prior to and during the prosecution of the ’807 Patent application, CAC was  
11 aware of Zoomlot due to the nature of the copyright infringement suit and furthermore,  
12 because the companies were competitors in the field of sub-prime automobile lending.

13           47. The withheld information related to Zoomlot would have been material to the  
14 Patent Office in determining whether to grant the patent under 35 U.S.C. §§ 102, 103  
15 because, among other things, it showed that the claimed invention was sold in the United  
16 States and described in printed publications more than one year prior to the application  
17 for a patent.

18           48. CAC, Mr. Brock and their counsel withheld references to Zoomlot or  
19 provided affirmative misstatements about Zoomlot with specific intent to deceive the  
20 USPTO.

21           49. As a result of the intentional and fraudulent conduct by CAC, Mr. Brock and  
22 their counsel, the ’807 Patent was issued and assigned to CAC.

23           50. At all relevant times, CAC (by and through, without limitation, the knowledge  
24 of Mr. Brock and its counsel) was aware for the fraudulent procurement of the ’807  
25 Patent but has nonetheless continued its efforts to enforce the fraudulently procured ’807  
26 Patent to monopolize the Relevant Market.

27           **CAC’s Wrongful Enforcement of the ’807 Patent to Obtain Monopoly**  
28

1           51. On March 4, 2013 CAC brought an action for infringement of the '807 Patent  
2 against Westlake in the United States District Court for the Central District of California,  
3 Case No. 13-cv-01523.

4           52. Westlake and Nowcom are informed and believe and on that basis allege that  
5 CAC made similar threats to other competitors in the Relevant Market.

6           53. Westlake and Nowcom are informed and believe and on that basis allege that  
7 CAC continues to assert the '807 Patent and demand royalties from other market  
8 participants, including at least Drivetime.

9           54. CAC's threats of litigation were objectively baseless and made in bad faith  
10 because the '807 Patent was procured fraudulently through intentional misrepresentations  
11 and omissions to the patent examiner during prosecution of the application which led to  
12 the '807 Patent.

13           55. As a result of CAC's anticompetitive conduct in enforcing the fraudulently  
14 procured '807 Patent, Westlake and Nowcom lost, and continue to lose, sales through  
15 their competing software and has been hindered and delayed in competing in the  
16 Relevant Market.

17           56. CAC's anticompetitive activities have caused adverse impacts on the Relevant  
18 Market, including but not limited to less competition and higher prices in the Relevant  
19 Market.

20  
21                                   **FIRST CLAIM FOR RELIEF**

22                           **Violation of Section 2 of the Sherman Act**

23                                   **15 U.S.C. § 2**

24           57. Westlake and Nowcom incorporate by reference every allegation set forth  
25 above.

1 58. CAC intentionally and fraudulently failed to disclose and concealed prior  
2 sales and prior art from the Patent Office that was material to the '807 Patent application,  
3 as set forth more fully above.

4 59. As described above, CAC has been, and is currently engaged in, enforcing the  
5 fraudulently procured '807 Patent against Westlake, Nowcom, their competitors, and  
6 others in the Relevant Market. The information withheld from the Patent Office was  
7 material to the patentability of the invention claimed in the '807 Patent.

8 60. But for the information withheld from the USPTO, the '807 Patent would not  
9 have issued.

10 61. CAC's scheme to fraudulently induce the USPTO into issuing the '807 Patent  
11 was specifically intended to support CAC's attempt to monopolize the Relevant Market.

12 62. CAC obtained market power in the Relevant Market by obtaining and by  
13 wrongful enforcement of the fraudulently procured '807 Patent.

14 63. CAC's anticompetitive acts violate the Sherman Act (15 U.S.C. § 2).  
15 As a result of CAC's improper attempts to maintain and enlarge its market power through  
16 enforcement of the fraudulently procured '807 Patent, Westlake's and Nowcom's  
17 attempts to compete in the market were hindered and delayed, resulting in damages  
18 including but not limited to lost profits.

19 64. Westlake and Nowcom are entitled to recovery of damages, treble damages as  
20 well as costs of this suit and attorneys' fees, according to the Clayton Act (15 U.S.C.  
21 §§ 15, 26).

22  
23 **SECOND CLAIM FOR RELIEF**

24 **Sham Litigation: Monopolization and Attempted Monopolization**

25 **Under 15 U.S.C. § 2**

26 65. Westlake and Nowcom incorporate by reference every allegation set forth  
27 above.  
28

1 66.CAC's patent lawsuit, and in particular, the claims asserted under the '807  
2 Patent, were objectively and subjectively baseless. These meritless claims were brought  
3 by CAC in bad faith as an anticompetitive weapon to attempt to force Westlake and  
4 Nowcom from the Relevant Product Market and to attempt to interfere directly with  
5 Westlake's and Nowcom's business relationships.

6 67.Further, CAC pursued its claims under the '807 Patent with full knowledge that  
7 those claims were invalid, for improper and anticompetitive reasons, including to put  
8 financial pressure on Westlake and Nowcom and thereby force them to accede to CAC's  
9 demands, and to cease utilizing its Dealer Center® program and related products and  
10 services, and to prevent it from asserting the claims asserted herein.

11 68.By virtue of the foregoing, CAC has sought to maintain its monopoly power in  
12 the Relevant Market(s), and/or has attempted to monopolize such Market(s) and there is a  
13 dangerous probability that, but for the acts of Westlake and Nowcom in fighting the  
14 baseless litigation in the Westlake action, CAC would have succeeded in its scheme.

15 69.Westlake and Nowcom have been damaged in their business and property by  
16 virtue of these acts by CAC, in an amount to be proven at trial, but believed to be in  
17 excess of \$2 million. Under 15 U.S.C. § 15, Westlake and Nowcom are entitled to treble  
18 the amount of their antitrust damages. In addition, by virtue of this same section,  
19 Westlake is entitled to their attorneys' fees and costs incurred in bringing and pursuing  
20 this antitrust action.

### 21 **THIRD CLAIM FOR RELIEF**

#### 22 ***Walker Process***

23  
24 70.Westlake and Nowcom incorporate by reference every allegation set forth  
25 above.

26 71.CAC fraudulently obtained the '807 Patent by failing to disclose prior sales of  
27 its CAPS® product and failing to disclose prior art to the patent examiner.  
28

1 72.CAC has willfully sought and maintained monopolization of the Relevant  
2 Product Market, in violation of Section 2 of the Sherman Act through predatory conduct,  
3 with the intent to monopolize, and with the dangerous probability of gaining monopoly  
4 power in the Relevant Product Market.

5 73.As a direct and proximate result of the foregoing, Westlake and Nowcom have  
6 been injured in their business and property in an amount to be determined at trial.

7  
8 **FOURTH CLAIM FOR RELIEF**

9 **Unfair Competition Under Cal. Bus. And Prof. Code § 17200**

10 74. Westlake and Nowcom incorporate by reference every allegation set forth  
11 above.

12 75. The acts of CAC, as herein alleged, constitute unlawful, unfair, and deceptive  
13 business practices in violation of California Business and Professions Code § 17200 et  
14 seq. Such acts include, without limitation, CAC's initiation and prosecution of groundless  
15 litigation, CAC's unlawful distribution and sale of CAPS® with a false patent  
16 designation, CAC's unfair competition and false advertising in connection with the  
17 marketing and sale of CAPS® in violation of California Business and Professions Code  
18 § 17500 *et seq.*, and CAC's deceptive statements regarding the patented nature of  
19 CAPS® as alleged above.

20 76. As a result of CAC's conduct, Westlake and Nowcom have suffered and will  
21 continue to suffer damage to their business, reputation, and goodwill.

22 CAC's conduct has caused, and will continue to cause, immediate and irreparable  
23 harm to Westlake and Nowcom for which there is no adequate remedy at law, and for  
24 which Westlake and Nowcom are entitled to injunctive relief.

25  
26 **PRAYER FOR RELIEF**

1           Wherefore, for its prayer for relief, Westlake and Nowcom pray for judgment as  
2 follows:

3           1. On Westlake's and Nowcom's First claim for relief, that Westlake and  
4 Nowcom be awarded profits on their lost sales, as well as other damages, treble damages  
5 and costs and attorneys' fees incurred in connection with this case with this action against  
6 CAC, according to 15 U.S.C. §15;

7           2. On Westlake's and Nowcom's First claim for relief, a permanent injunction  
8 enjoining CAC and their officers, agents, servants, employees, and attorneys, and those  
9 persons in active concert or participation with them, from conducting future predatory  
10 acts of monopolization;

11           3. On Westlake's and Nowcom's Second claim for relief, that Westlake and  
12 Nowcom be awarded profits on their lost sales, as well as other damages, treble damages  
13 and costs and attorneys' fees incurred in connection with this case with this action against  
14 CAC, according to 15 U.S.C. §15;

15           4. On Westlake's and Nowcom's Second claim for relief, that Westlake and  
16 Nowcom be awarded profits on their lost sales, as well as other damages, treble damages  
17 and costs and attorneys' fees incurred in connection with this case with this action against  
18 CAC, according to 15 U.S.C. §15;

19           5. On the Third claim for relief, that the Court find that CAC has falsely marked  
20 and continues to falsely mark its products with a notice that the products are covered by  
21 the '807 Patent, that CAC be found liable for a fine of up to \$500 per offense, that  
22 Westlake and Nowcom be awarded one-half of the total amount of the fine to be paid by  
23 CAC, and that this case be declared exceptional under 35 U.S.C. § 285;

24           6. On the Fourth claim for relief, for a determination that CAC be adjudged to  
25 have violated California Business and Professions Code § 1700 *et seq.* by unlawfully and  
26 unfairly competing against Westlake and Nowcom and be enjoined from further such  
27 violations;  
28

7. On all claims, for prejudgment interest;
8. On all claims, for attorneys' fees and costs;
9. For such other relief as the court deems just and proper.

**Dated:** 09/24/2015

**Respectfully submitted,**

By: /s/ John D. van Loben Sels  
John D. van Loben Sels

*Counsel for Westlake Services, LLC d/b/a  
Westlake Financial Services and Nowcom  
Corporation*



**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38, Westlake Services, LLC d/b/a Westlake Financial Services, and Nowcom Corporation hereby demand a jury trial.

**Dated:** 09/24/2015

**Respectfully submitted,**

By: /s/ John D. van Loben Sels  
John D. van Loben Sels

*Counsel for Westlake Services, LLC d/b/a  
Westlake Financial Services, and Nowcom  
Corporation*